UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.374
18 October 1999

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 374th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 May 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.374/Add.1.

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GE.99-41476 (E)

The meeting was called to order at 10.05 a.m.

SOLEMN DECLARATION BY A MEMBER OF THE COMMITTEE APPOINTED UNDER ARTICLE 17, PARAGRAPH 6, OF THE CONVENTION (agenda item 2)

1. The CHAIRMAN noted that Mr. Zupančič had resigned and that the State of which Mr. Zupančič was a national, Slovenia, in agreement with the other States parties, had designated Mrs. Polajnar-Pavčnik to replace him. He invited Mrs. Polajnar-Pavčnik to make the solemn declaration provided for in rule 14 of the Committee's rules of procedure (CAT/C/3/Rev.2).

2. Mrs. POLAJNAR-PAVČNIK made the following solemn declaration: "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee against Torture honourably, faithfully, impartially and conscientiously."

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Third periodic report of Italy (CAT/C/44/Add.2)

3. At the invitation of the Chairman, Mr. Moreno, Mr. Citarella, Mr. Mancuso, Mr. Pierangelini, Mr. Corvo, Mr. Maruccia and Mr. Calvetta (Italy) took places at the Committee table.

4. Mr. MORENO (Italy) said that the Italian Government had exhaustively examined the recommendations which the Committee had made on considering Italy's second periodic report and had attempted to cover them as thoroughly as possible in its third report. It had also replied separately to the Committee's concluding observations concerning the second periodic report.

5. The report (CAT/C/44/Add.2) described the views of the Ministry of Justice of Italy concerning the introduction of the crime of torture into Italian legislation. Numerous members of Parliament representing different political views had submitted a bill on torture, which was also aimed at setting up a special fund for victims of acts of torture.

6. On the basis of a statistical evaluation and reports by particularly reliable non-governmental organizations (NGOs), he was confident that the steps taken by the Italian authorities to set up special courses on the various human rights instruments were giving satisfactory results; the courses had been instituted for all members of the police force, carabinieri and prison staff, and efforts in that area had intensified in connection with the fiftieth anniversary of the Universal Declaration of Human Rights.

7. The Government had also taken steps to meet the arrival of hundreds of thousands of illegal immigrants in successive waves from the Maghreb area, Bosnia, Kurdistan and Albania, and more recently from Kosovo. The law on immigration was designed to regulate the flow of immigration into Italy and to guarantee respect for the rights of all foreigners entering Italian territory, and it provided for special jurisdictional procedures to decide, without the usual formalities and within a very short period of time, on any complaint lodged by a foreigner concerning status, field of employment or discrimination. Health measures had made it possible to regularize the position of more than 300,000 foreigners who had entered Italy illegally.

8. The presence in Italy of a large number of non-European Union foreigners (1.2 million according to some sources) raised problems of integration, education and health. Both the central and local authorities based themselves on the principle that all foreigners whatever their origin and whether they had entered the country legally or illegally, should have exactly the same rights and opportunities as Italian citizens. Additional facilities, such as language courses for both adults and children, had been established for that purpose. On the other hand, it had to be emphasized that the presence of so many foreigners, of different cultures and nationalities, raised many problems in daily life. While there were no signs of a discriminatory attitude among the Italian population, measures were being taken at all levels towards the full integration of foreigners. Some sporadic racial episodes had occurred, for which extremist fringe groups largely consisting of teenagers had been responsible. What was most alarming about illegal immigration was the fact that an ever-increasing number of newcomers were being linked to organized crime and that many of them were trafficking in drugs and practising prostitution. Statistics on prisons reflected that situation: the number of foreigners detained for involvement in criminal procedures was approximately one third of the entire prison population, whereas foreigners in Italy represented less than 8 per cent of the Italian population.

9. In view of the increasing numbers of foreigners detained, efforts had been made to ensure respect for their rights, especially in the following areas: right to defence counsel; respect for religious customs; health care; opportunity to learn a trade; cultural assistance; and mediation. In addition, the provisions of the Prisons Act and its enforcement norms had been incorporated into the 1998 Consolidated Act on Immigration and the Condition of Foreigners. The new provisions had been translated into several languages. In the same vein, provisions relating to the health of foreign prisoners, whether or not they were members of the social security system, granted them the same rights as Italian citizens regarding accidents or emergency or essential health care. An April 1999 circular sought to help foreigners who were not in order with their identity papers or residence permits to find jobs.

10. Action had been necessary in order to meet the increase in the prison population as a whole; Act No. 165 of 1998 had established alternative measures to detention, which had led to a gradual decline in the number of prisoners, as confirmed by the statistics - there had been a slow but progressive decrease in the number of prisoners serving short- or medium-term sentences - and, most importantly, had made it possible to avoid imprisonment for those who, out of ignorance or due to inability to afford defence counsel, would not have been given a suspended sentence pending the outcome of their application for community service. In addition, when a request for home detention or semi-liberty (in the case of sentences not exceeding six months) was submitted after the beginning of the execution of the sentence, the Supervisory Judge could order the suspension of the execution of the sentence and, if necessary, the provisional enforcement of the alternative measure, pending the judgement of the Supervisory Court.

11. Recent organizational changes in the prisons had included the establishment of UGAP, a service aimed at ensuring security, order and discipline in the prisons, through advisory assistance to the Director General of the Prison Administration in the following areas: identification of

resources for prison services and structures; transfer to another prison or to an external hospital service of prisoners detained for particularly serious crimes; possible establishment of special security facilities; cooperation with the Central Protection Service of the Public Security Department concerning the formulation and implementation of protection measures provided for under Act No. 82 of 15 March 1991. UGAP was also in charge of coordinating the action of the Mobile Task Force and the criminal investigation police in inquiries related to the institutional activities of the Prison Police Corps.

12. Amendments had been proposed to the Code of Criminal Procedure, providing for special measures relating to pre-trial detention, deferment of the enforcement of a sentence, etc., in order to increase protection for individuals at an advanced stage of AIDS.

13. To give effect to the recommendations of the European Committee for the Prevention of Torture (CPT), a recent Memorandum had been issued concerning the medical visits register, in which the physician reported the outcome of the first entry visit; in accordance with CPT recommendations, physicians must enter in the register statements made by the clients about their own health, possible abuse suffered, relevant circumstances surrounding it and persons allegedly responsible and provide their own evaluation of compatibility between the injuries found and the causes stated by the clients. The Memorandum stipulated that, when injuries were found, the prison governor must immediately transmit the physician's notes, together with any other information made available by other staff members, to the judicial authority. Prison staff were under an obligation promptly to request a physician's intervention upon entry of prisoners showing injuries or signs of possible violence or abuse.

14. In accordance with remarks from international organizations, a Circular had been issued in March 1999 concerning censorship of prisoners' correspondence. The Circular referred to the decisions of the European Court of Human Rights, which had reaffirmed the fact that the norms on censorship of correspondence occasionally violated articles 8, 13 and 25 of the European Convention for the Protection of Human rights. The Circular therefore provided that, pending the necessary changes to articles 18 and 35 of the Prisons Act, requests by the prison governor to the judicial authority for censorship of correspondence should explicitly exclude all correspondence addressed to the Council of Europe, the Human Rights Committee and the European Court of Human Rights, for the duration of six months subject to extension on request.

15. Mr. EL MASRY (Country Rapporteur), noted with appreciation Italy's punctual submission of its report for the third time. However, Italy had still not implemented article 4 of the Convention and the Committee's recommendation, on considering Italy's second report, that the offence of torture should be introduced into Italy's Criminal Code. In that respect, he wondered how the report could state that the Italian Government was on the whole in favour of introducing the crime of torture into the Criminal Code while at the same time implying that it was superfluous given the multiplicity of provisions in the Criminal Code covering various offences, such as bodily injury and others which might fall within the purview of torture.

16. Paragraph 9 of the report did mention a bill for the introduction of a special aggravating circumstance to be called "torture", which was defined in very explicit terms and which increased a sentence by one third or one half. However, bills of that type submitted to Parliament in the past had never been discussed. He asked whether that situation was due to a basic opposition by Parliament to the introduction of such a definition or to an overburdened legislative calendar.

17. Regarding the measures taken under article 2 of Law No. 332 mentioned in paragraph 11, he welcomed the progress represented by the introduction of a new provision stipulating that questioning outside court had to be documented by sound or audio-visual recordings, failing which it could not be used in evidence, which was a means of discouraging attempts at coercion or evading the rules. In that connection, he said that the report of CPT on its second visit to Italy indicated that access to defence counsel and confidentiality were not always guaranteed, as it was unusual to find defence counsel in police stations and confidentiality was dependent upon the infrastructure; he asked for further information, in particular concerning the practice of "informal" questioning.

18. The CPT's report also indicated that detainees were informed of their rights, but only on admission to prison. The Committee agreed with CPT that that was too late, as the risk of ill-treatment began with arrest.

19. He welcomed the new provision mentioned in paragraph 12 of the report, providing for the prohibition, applicable to every kind of decision, against the judge turning an accused's silence into an argument against him. He also welcomed the adoption of Law No. 40 of 6 March 1998, governing immigration and the condition of aliens, which provided that an alien living in the country legally enjoyed the same civil rights and treatment as an Italian citizen, within the limits of the law, defined a discriminatory act and indicated the principal legal remedies available to ensure the cessation of such an act.

20. With regard to the holding centres where foreigners in an irregular situation were placed for a maximum of 20 days when they could not be expelled immediately, he asked what were the rights of foreigners held in such centres, besides the right to contact family members abroad, in what way such centres were different from prisons and whether, once the 20 days were up, the foreigner still could not be expelled immediately.

21. He asked whether the new reception policy for foreigners mentioned in paragraph 21 of the report was being implemented in order to meet the current inflow of refugees from Kosovo.

22. He noted with appreciation the measures described in paragraph 30, which provided for a system in which foreign prisoners to whom the judicial authorities proposed alternative penalties could also be granted temporary work permits for the period of the duration of their sentence. He welcomed the amendment to a provision of article 37 of the Executive Regulations, cited in paragraph 32 of the report, according to which the telephone conversations of foreign prisoners would be overheard and recorded only when specifically ordered by the competent juridical authority. That measure enabled foreign prisoners to maintain contact with their families, which they might previously have been unable to do if the prison lacked interpreters with a command of their language.

23. Turning to the individual cases described in part II of the repor said that the information on Somalia was unfortunately too brief and th had therefore had to use other sources, including Amnesty International reports. In the summer of 1997, a group of Italian parachutists who ha part in United Nations peacekeeping operations in Somalia in 1993 and 1 publicly denounced acts of torture which they had seen committed by oth Italian blue helmets against Somalis, some of whom had died as a result commission of inquiry set up by the Italian Government to look into the matter - the Gallo Commission - had concluded that the incidents of vio had "only" been isolated cases, although it had acknowledged that in fut military officials assigned to that type of operation should be better and had recommended, in particular, that military police personnel and should be included in such missions. The Gallo Commission had also fou number of the cases reported - application of electric shocks, collecti rapes, attempted rapes, ill-treatment resulting in serious injury (conc which the armed forces had falsified documents in an attempted cover-up be credible and probably true.

24. However, the Gallo Commission had not made one visit to Somalia t conduct an inquiry and gather testimony. In view of their poor educati limited means the victims would never be able to bring their cases befo Italian courts. Thus he fully endorsed the June 1997 proposal by Amnest International to the Italian authorities concerning the establishment o effective mechanism for processing the complaints of the Somali victims, asked the Italian delegation to provide more extensive information on th number and nature of the cases and the status of the procedures relatin them. It would also be useful to know which acts had been punished by t disciplinary sanctions handed down by the Ministry of Defence in 12 case mentioned by Amnesty International; he hoped they were not the acts of t in question, which required sanctions of a quite different, and much har order.

25. Apart from the Somalia case, the information contained in the repo Amnesty International and the United States Department of State appeared indicate that members of the Italian police and armed forces were racial prejudiced towards foreigners and tended to treat them violently. He no with appreciation the information in paragraph 21 of the report, accordi which the recently approved legislation, notwithstanding its repressive aspects, was characterized by a new receptiveness to foreigners which ap to reflect a new attitude on the part of the police forces. Paragraph 3 the report stated that every future member of the police was required to a series of tests in order to be hired; he asked whether those tests inc psychological tests and whether current staff were also required to take tests.

26. Mr. BURNS (Alternate Country Rapporteur) said that Italy seemed to facing a two-fold problem: overcrowding in the prisons and tensions bet the police and foreigners. He welcomed the specific remedial measures be taken. He was also in favour of the initiatives taken in connection with training for the carabinieri, which now included a human rights component a matter of particular interest, training was dispensed not by the carabi services themselves but by the university. Freedom of worship in the pri was another positive point.

27. In another sphere, he also welcomed the decision systematically to make audio or video recordings of all interviews between the police and persons in custody, noting that the worst abuses were committed during the custody period. The custody period - five days - was too long; he asked whether that period was one of solitary confinement during which the suspect was unable to consult a lawyer.

28. He would appreciate a brief description of the provisions governing the obligation to carry an identity document, for both Italian nationals and foreigners. In that connection, he cited the case of Grace Patricia Akpan - mentioned in paragraph 85 - who had been charged with violating several articles of the Criminal Code, merely for forgetting her identity document at home. More generally, he wondered whether it was advisable for a modern democracy to maintain the offence of slander against the police and armed forces.

29. He did not understand some of the figures given in paragraph 46. It stated that 31 cases had ended in a guilty verdict, whereas later in the paragraph it was stated that 38 other cases had ended in a guilty verdict. What exactly was the situation regarding those cases?

30. He fully endorsed Mr. El Masry's questions regarding the Somalia case. Concerning the Italian citizens who had disappeared in Argentina (report, para. 80), he asked on what legislation the intervention had been based. He compared the case to General Pinochet's situation in the United Kingdom and expressed appreciation at the fact that impunity seemed to be losing ground in the Western countries.

31. Finally, he would like to know the status of the inquiry into the Salvatore Marino case and the reasons for the delay in settling it.

32. Mr. SØRENSEN said he would like to see the Committee against Torture added to the list of organizations to which prisoners could write without having their mail censored.

33. He noted with appreciation the various provisions concerning training of staff, especially medical staff. He would like to know the status of the seminars on the various aspects of recognizing injuries mentioned in paragraph 60 of the report.

34. Noting that neither Italy's initial report nor its second or third periodic reports dealt with the right to redress and compensation contained in article 14 of the Convention, he welcomed the new bill, which dealt at length with questions relating to compensation. Beyond the financial aspect, he would like to know whether the bill provided for symbolic measures of redress, such as public recognition of the injury suffered by the victim. In that context, he thanked Italy for its generous contribution to the United Nations Voluntary Fund for the Victims of Torture and noted the symbolic importance of 26 June, the United Nations International Day in Support of Victims of Torture.

The public part of the meeting rose at noon.